

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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STEPHEN FLANAGAN, as a Trustee of the GENERAL  
BUILDING LABORERS' LOCAL 66 PENSION FUND;  
STEPHEN FLANAGAN, as a Trustee of the GENERAL  
BUILDING LABORERS' LOCAL 66 WELFARE FUND;  
STEPHEN FLANAGAN, as a trustee of the GENERAL  
BUILDING LABORERS' LOCAL 66 VACATION  
FUND; STEPHEN FLANAGAN, as Trustee of the  
GENERAL BUILDING LABORERS' LOCAL 66  
ANNUITY FUND; STEPHEN FLANAGAN; as Trustee  
of the GENERAL BUILDING LABORERS' LOCAL 66  
LABORERS' EMPLOYER COOPERATIVE AND  
EDUCATIONAL TRUST FUND; STEPHEN FLANAGAN, as a  
Trustee of the GENERAL BUILDING LABORERS' LOCAL 66  
GREATER NY LABORERS' EMPLOYER COOPERATIVE  
AND EDUCATIONAL TRUST FUND; STEPHEN  
FLANAGAN, as a Trustee of the GENERAL BUILDING  
LABORERS' LOCAL 66 TRAINING PROGRAM; STEPHEN  
FLANAGAN, as a Trustee of the GENERAL BUILDING  
LABORERS' LOCAL 66 NEW YORK STATE HEALTH AND  
SAFETY FUND; STEPHEN FLANAGAN, as Business  
manager of GENERAL BUILDING LABORERS' LOCAL  
UNION NO. 66 of the LABORERS' INTERNATIONAL  
UNION OF NORTH AMERICA, AFL-CIO,

Plaintiff,

-against-

STONE COMMERCIAL SPRAYING COMPANY, INC., and  
THOMAS WESTHALL,

Defendants.  
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**APPEARANCES:**

**Law Offices of William T. LaVelle, P.C.**

*Attorneys for the plaintiff*

The LaVelle Building

57 East Main Street

Patchogue, NY 11772

By: Alicia M. Menechino, Esq., Of Counsel

**ORDER**

05-CV-4527 (ADS) (AKT)

**NO APPEARANCE:**

Stone Commercial Spraying Company, Inc.  
Thomas Westhall

**SPATT, District Judge.**

On September 23, 2005, the plaintiff commenced this action against the defendants seeking to collect delinquent and unpaid fringe benefit contributions and to conduct an audit of the defendants' books and records pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132, and the Taft-Hartley Act, 29 U.S.C. 185. On February 2, 2008, the Court entered a default judgment against the defendants, Stone Commercial Spraying Company, Inc. and Thomas Westhall, and referred the matter to United States Magistrate Judge A. Kathleen Tomlinson for an inquest as to damages, including reasonable attorneys' fees and costs.

On July 20, 2012, Judge Tomlinson issued a Report and Recommendation (the "Report") recommending that plaintiff be awarded no damages at this time and that the plaintiff's request for an audit be denied. In addition, Judge Tomlinson further recommended that the Court grant the plaintiff leave to renew the motion if the plaintiff can provide sufficient support for the relief sought in accordance with the guidance set forth in the Report. To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed

Judge Tomlinson's Report and finds it be persuasive and without any legal or factual errors.

There being no objection to Judge Tomlinson's Report, it is hereby

**ORDERED**, that Judge Tomlinson's Report and Recommendation is adopted in its entirety. The Court awards the plaintiff no damages at this time and denies the plaintiff's request to conduct an audit of the defendants' books and records, and it is further

**ORDERED**, that the Court grants the plaintiff leave to renew the motion for damages in accordance with the guidance set forth in the Report within 30 days of the date of this order.

**SO ORDERED.**

Dated: Central Islip, New York  
September 24, 2012

/s/ Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge